

REMARKS

This paper is responsive to the Office Action dated March 8, 2005. Claims 1-41 were examined. Claims 17-26, 30-35 and 38-41 have been allowed. The Office has indicated that claims 10-12 would be allowable if rewritten in independent form. Claims 1-16, 27-29, 36 and 37 have been rejected.

Rejections Under 35 U.S.C. §103

Claims 1, 2, 4-9, 14-16, 27-29, 36 and 37 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,466,971 issued to Humpleman et al. (hereinafter "Humpleman") in view of U.S. Patent No. 5,602,918 issued to Chen (hereinafter "Chen"). Claims 3 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Humpleman in view of Chen as applied to claim 1 above, and further in view of *Applied Cryptography* by Schneier (hereinafter "Schneier"). Applicant respectfully traverses all of the rejections.

In supporting these rejections, the Office engages in an obviousness analysis that employs two analysis methods that are both identified as improper by the Federal Circuit. The Office makes assumptions about the references based only on common knowledge without evidentiary support, and conducts the improper A+B+C type analysis discussed in Ruiz, et al. v. A.B. Chance Company (Fed. Cir. 2004). Although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so' (MPEP 2143.01, *quoting In re Mills*, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990); *see also In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992)). "It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based" (MPEP 2144.03 citing In re Zurko, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). "As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support" (Id.). "Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied" (MPEP 2144.03). "Furthermore, as noted by the court in Ahlert, any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the

evidentiary showing made by the examiner to support a particular ground for rejection" (MPEP 2144.03). Applicant respectfully requests that the Office indicate the motivation or suggestion in the references for utilizing a firewall in Humpleman in a manner that would disclose or suggest Applicant's claims.

The Federal Circuit elaborated on the need for more than assembly of components to perform an obviousness analysis in Ruiz, et al. v. A.B. Chance Company (Fed. Cir. 2004). In that decision the court states the following:

In making the assessment of differences, section 103 specifically requires consideration of the claimed invention "as a whole." Inventions typically are new combinations of existing principles or features. Env'tl. Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 698 (Fed. Cir. 1983) (noting that "virtually all [inventions] are combinations of old elements."). The "as a whole" instruction in title 35 prevents evaluation of the invention part by part. Without this important requirement, an obviousness assessment might break an invention into its component parts (A + B + C), then find a prior art reference containing A, another containing B, and another containing C, and on that basis alone declare the invention obvious. This form of hindsight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way to achieve a new result - often the very definition of invention.

Section 103 precludes this hindsight discounting of the value of new combinations by requiring assessment of the invention as a whole. This court has provided further assurance of an "as a whole" assessment of the invention under § 103 by requiring a showing that an artisan of ordinary skill in the art at the time of invention, confronted by the same problems as the inventor and with no

knowledge of the claimed invention, would select the various elements from the prior art and combine them in the claimed manner. In other words, the examiner or court must show some suggestion or motivation, before the invention itself, to make the new combination. See *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

Hence, the Office engages in an obviousness analysis that does not consider the claimed invention "as a whole" as directed by the Federal Circuit.

In addition, although Humpleman discloses transmission of XML command messages, Humpleman does not disclose or suggest request and response messages. Without disclosing requests and responses, Humpleman cannot disclose or suggest "the response message corresponding to the validated request message" as recited in claim 1, or "means for proxying an access request by the client targeting the information resource" as recited in claim 27.

With regard to claim 4, Humpleman does not disclose or suggest "transmitting the formatted request message to a secure data broker for the request message validating." The Office cites the following section to support its rejection:

Referring to FIG. 23, in another aspect, the present invention provides a standard command protocol and control language translation for inter-device communication between disparate devices in a network. For different devices to share information, the information must be in a format that a requesting device can interpret. And, for a device 120 to control another device 22, the two devices must use a common language in order to interpret one another's commands. The present invention provides a common identification format for data and command protocols.

In one embodiment, a method of common presentation or packaging of data and command protocol is provided, whereby a receiving device 122 can determine the native format of transmitted data. If the receiving device 122 can interpret

that native format, then it can accept the data directly. Otherwise, the receiving device 122 can request a translator device 124 or application to translate the data into a desired format which the requesting device 122 can interpret. The translator device 124 or application determines the native format of the original data, translates the data into said desired format, and sends the translated data to the requesting device 122.

The requesting device 122 then processes that data as though the data had originally been provided in the requesting device's native language format by the sending device 120. The requesting device 122 can also send a response back to the sending device 120 in the requesting device's native format, or send a response by proxy through the translator device 124 or application for translation into the native format of the sending device 120. The translation method can be utilized for information including command protocols, data files and audio/video streams.


Applicant cannot locate in this cited section, or any other section, of Humpleman that discloses the above quoted limitation of claim 4. Applicant respectfully submits that Humpleman fails to disclose or suggest the limitation of claim 4.

With regard to claim 28, the Office merely refers to XML validation of Humpleman and a firewall in Chen to support the rejection of claim 28. However, the Office cannot identify any section of either Humpleman or Chen that discloses or suggests claim 28. Hence, the Office states that the limitations of claim 28 would be obvious. Again, this type of obviousness analysis, which lacks any evidentiary support in the record, is improper according to the Federal Circuit.

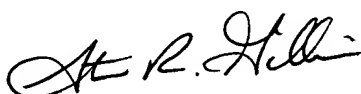
Neither Humpleman, Chen, nor Schneier, standing alone or in combination, disclose or suggest any of Applicant's claims for at least the reasons given above. Therefore, all of Applicant's are allowable over the art of record.

Conclusion

In summary, claims 1-41 are in the case. All claims are believed to be allowable over the art of record, and a Notice of Allowance to that effect is respectfully solicited. Nonetheless, if any issues remain that could be more efficiently handled by telephone, the Examiner is requested to call the undersigned at the number listed below.

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 Steven R. Gilliam	<u>30-Jun-2005</u> Date

Respectfully submitted,



Steven R. Gilliam, Reg. No. 51,734
Attorney for Applicant(s)
(512) 338-6320
(512) 338-6301 (fax)

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